

BILL ANALYSIS

Senate Research Center

S.B. 38
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Hazing is an especially dangerous and seemingly intractable problem on campuses across Texas. At least one person has died in a hazing-related incident on a North American college campus every year since 1957. Despite the efforts of law enforcement and university administrators, the problem shows no signs of abating. 2017 saw four hazing-related deaths, including a student at Texas State University.

Texas' hazing statute fails to provide universities proper guidance on what conduct constitutes hazing and does not address adequately the dangers of alcohol and drug-related hazing. What's more, the immunity provisions for persons reporting hazing are unclear and arguably create the perverse possibility that students can avoid liability by reporting their own acts of hazing. Current law governing venue leaves open the possibility that the only court in which an instance of hazing may be prosecuted is one that has no geographic relationship to any of the parties involved. Finally, although institutions are required to report a list of student organizations found responsible for hazing, the reports often are untimely and insufficient.

S.B. 38 makes several changes to the current law. It would clarify the definition of hazing and the kinds of conduct that fall within that definition. It also would amend the provisions concerning immunity from prosecution for those reporting hazing incidents. The bill would add a venue provision specifying in which courts a violation of the hazing law may be prosecuted. Finally, it would strengthen institutional reporting of hazing misconduct to be more specific, timely, and transparent. (Original Author's/Sponsor's Statement of Intent)

S.B. 38 amends current law relating to the offense of hazing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.151(5) and (6), Education Code, as follows:

(5) Defines "organization" as a fraternity, sorority, association, corporation, order, society, corps, club, or student government, a band or musical group or an academic, athletic, cheerleading, or dance team, including any group or team that participates in National Collegiate Athletic Association competition, or a service, social, or similar group, whose members are primarily students.

(6) Deletes existing text relating to an act that endangers the mental or physical health or safety of a student, makes nonsubstantive changes, and provides that "hazing" means any intentional, knowing, or reckless act, occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization if the act:

(A) makes nonsubstantive changes to this paragraph;

(B) involves certain physical brutality or other similar activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health of the student;

(C) involves consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance, other than described by Paragraph (E), that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;

(D) is any activity that induces, causes or requires the student to perform a duty or task that involves a violation of the Penal Code, rather than acts described by this subdivision as any activity that intimidates or threatens the student with ostracism, subjects the student to extreme mental stress, shame, or humiliation, adversely affects the mental health or dignity of the student, or discourages the student from entering or remaining registered in an educational institution, or may reasonably be expected to cause the student to leave the organization or the institution rather than submit to the activity. Creates this paragraph from existing text of Paragraph (E) and makes nonsubstantive changes; or

(E) involves coercing, as defined by Section 1.07 (Definitions), Penal Code, the student to consume:

(i) a drug; or

(ii) an alcoholic beverage or liquor in an amount that would lead a reasonable person to believe that the student is intoxicated, as defined by Section 49.01 (Definitions), Penal Code.

SECTION 2. Amends Section 37.155, Chapter 37, Education Code, as follows:

Sec. 37.155. New heading: IMMUNITY FROM PROSECUTION OR CIVIL LIABILITY AVAILABLE. (a) Creates this subsection from existing text and makes no further changes.

(b) Creates this subsection from existing text and provides that any person who voluntarily reports a specific hazing incident involving a student in an educational institution to the dean of students or other appropriate official of the institution is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the reported hazing incident if the person:

(1) reports the incident before being contacted by the institution concerning the incident or otherwise being included in the institution's investigation of the incident; and

(2) as determined by the dean of students or other appropriate official of the institution designated by the institution, cooperates in good faith throughout any institutional process regarding the incident. Makes nonsubstantive changes.

(c) Creates this subsection from existing text and provides that immunity under Subsection (b) extends to participation in any judicial proceeding resulting from the report, rather than providing that immunity extends to participation in any judicial proceeding resulting from the report.

(d) Creates this subsection from existing text and provides that a person is not immune under Subsection (b) if the person reports the person's own act of hazing

or reports an incident of hazing in bad faith or with malice, rather than providing that a person reporting in bad faith or with malice is not protected by this section.

SECTION 3. Amends Subchapter F, Chapter 37, Education Code, by adding Section 37.158, as follows:

Sec. 37.158. VENUE. (a) Defines "prosecuting attorney."

(b) Authorizes an offense under this subchapter (Hazing) to be prosecuted:

(1) in any county in which the offense may be prosecuted under other law;
or

(2) if the consent required by Subsection (c) is provided, in a county, other than a county described by Subdivision (1), in which is located the educational institution campus at which a victim of the offense is enrolled.

(c) Authorizes an offense under this subchapter to be prosecuted in a county described by Subsection (b)(2) only with the written consent of a prosecuting attorney of a county described by Subsection (b)(1) who has authority to prosecute an offense under this subchapter.

SECTION 4. Amends Section 51.936, Education Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Requires each postsecondary educational institution, not later than the 14th day before the first class day of each fall or spring semester, rather than during the first three weeks of each semester, to distribute to each student enrolled at the institution:

(1) makes no changes to this subdivision; and

(2) a copy of, or electronic link to a copy of, the report required under Subsection (c-1), rather than a list of organizations that have been disciplined for hazing or convicted for hazing on or off the campus of the institution during the preceding three years.

(c-1) Requires each postsecondary educational institution to develop and post in a prominent location on the institution's Internet website a report on hazing committed on or off campus by an organization registered with or recognized by the institution. Provides that the report:

(1) is required to include certain information regarding each disciplinary action taken by the institution against an organization for hazing, and each conviction of hazing under Section 37.153 (Organization Hazing Offense) by an organization, during the three years preceding the date on which the report is issued or updated;

(2) is required to be updated to include information regarding each disciplinary process or conviction not later than the 30th day after the date on which the disciplinary process is resolved or the conviction becomes final, as applicable; and

(3) is prohibited from including personally identifiable student information and is required to comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c-2) Requires each postsecondary educational institution to provide to each student who attends the institution's student orientation a notice regarding the nature and availability of the report required under Subsection (c-1), including the report's Internet website address.

SECTION 5. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 6. Makes application of Section 37.155, Education Code, as amended by this Act, prospective.

SECTION 7. Provides that Section 51.936(c), Education Code, as amended by this Act, and Section 51.936(c-2), Education Code, as added by this Act, apply beginning with the 2020 spring semester.

SECTION 8. Requires each postsecondary educational institution, not later than January 1, 2020, to develop and post on the institution's Internet website the report required under Section 51.936(c-1), Education Code, as added by this Act.

SECTION 9. Effective date: September 1, 2019.